



CITY COUNCIL AGENDA REPORT

MEETING DATE: AUGUST 19, 2008

ITEM NUMBER: **VI-8**

SUBJECT: AMENDMENT No. 2 TO COOPERATIVE AGREEMENT No. D99-128 TO EXTEND THE TERM OF THE AGREEMENT FOR TWO YEARS TO BE CONSISTENT WITH THE END OF THE CURRENT PHASE OF THE NITROGEN AND SELENIUM MANAGEMENT PROGRAM

DATE: AUGUST 7, 2008

FROM: PUBLIC SERVICES DEPARTMENT/ENGINEERING DIVISION

PRESENTATION BY: PETER NAGHAVI, DIRECTOR OF PUBLIC SERVICES

FOR FURTHER INFORMATION CONTACT: ERNESTO MUÑOZ, CITY ENGINEER, 714-754-5335

RECOMMENDED ACTION

Approve Amendment No. 2 to Agreement No. D99-128 (Attachment 1), and authorize the Mayor and the City Clerk to execute the proposed Amendment.

BACKGROUND

In 1999, the Santa Ana Regional Water Quality Control Board (RWQCB) adopted Total Maximum Daily Loads (TMDLs) for nutrients and fecal coliform in the Newport Bay Watershed. A TMDL is a limiting measure of the amount of a particular substance, i.e., toxics, sediment, nutrients, fecal coliform, which impairs a water body, and which the water body can accept and still meet water quality standards. In June 2002, the Environmental Protection Agency established a list of 14 potential toxic contaminants in the Newport Bay Watershed. The RWQCB has mandated the implementation plans for the Toxics TMDL, which includes requirements for studies, monitoring, and the development of programs to attain TMDL contaminant reduction targets over a multi-year period. Additionally, the requirements of the TMDLs are incorporated into the Municipal National Pollutant Discharge Elimination System (NPDES) Stormwater Permit.

On June 16, 2003, the City entered into a cooperative agreement establishing responsibilities and associated costs to conduct the implementation of TMDL studies, monitoring; and programs, between the County of Orange, the Orange County Flood Control District, the Irvine Ranch Water District (IRWD), the Irvine Company, and the "Waterhsed Cities", which include the cities of Costa Mesa, Irvine, Laguna Hills, Laguna Woods, Lake Forest, Newport Beach, Orange, Santa Ana, and Tustin. The agreement forms the basis of cooperation for the implementation of the adopted TMDLs, whose primary purpose is to control and reduce the amount of fecal coliform, sediment, nutrients, and toxic contaminants entering Newport Bay. The agreement was developed to provide a long-term funding formula to ensure the costs of compliance with the TMDLs are shared equitably among the parties within the Newport Bay/San Diego Creek watershed.

ANALYSIS

The purpose of the amendment is to extend the term of the agreement for two years to be consistent with the end of the current phase of the Nitrogen and Selenium Management Program, and to recognize prior payments for services made directly by CALTRANS and IRWD

for work plan development and Bay algae studies respectively, as credits in the 2008-09 program budget.

ALTERNATIVES CONSIDERED

City Council may consider not approving the amendment. Non-participation in the TMDL activities removes the City from joint partnership in these regional efforts and displaces the City from realizing the benefits of the cooperative agreement. If Council chooses not to participate in the cooperative agreement, any projects identified by the TMDL process, or for other related purposes, will require 100 percent funding by the City. It is estimated that the cost for the City to provide these studies independent of the cooperative agreement would be significantly higher.

FISCAL REVIEW

The City's portion of TMDL costs for Newport Bay Watershed will continue per the original agreement. The City has funded its contribution towards the TMDL program in the past, and staff has included next fiscal year's fees of \$71,000 in the 2008-09 fiscal year budget.

LEGAL REVIEW

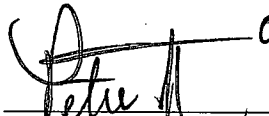
The City Attorney has reviewed and approved the attached Amendment No. 2 to Agreement D99-128 (Attachment 1) as to form.

CONCLUSION

Staff recommends that the City Council approve the Amendment and authorize the Mayor and the City Clerk to execute Amendment No. 2 to Agreement D99-128.



ERNESTO MUÑOZ
City Engineer



PETER NAGHAVI
Director of Public Services

DISTRIBUTION: City Manager
 City Clerk
 City Attorney
 Staff

ATTACHMENT: 1 Amendment No. 2 to Agreement D99-128

AMENDMENT NO. 2
AGREEMENT TO FUND NUTRIENT, FECAL COLIFORM AND TOXICS TOTAL MAXIMUM DAILY LOAD (TMDL)
STUDIES IN THE NEWPORT BAY WATERSHED

THIS AMENDMENT, for purposes of identification numbered Amendment No. 2 to Agreement No. D99-128, is made and entered into this ____ day of ____, 2008, by and between the County of Orange ("COUNTY"), the Orange County Flood Control District ("DISTRICT"), the City of Costa Mesa ("COSTA MESA"), the City of Irvine ("IRVINE"), the City of Laguna Hills ("LAGUNA HILLS"), the City of Laguna Woods ("LAGUNA WOODS"), the City of Lake Forest ("LAKE FOREST"), the City of Newport Beach ("NEWPORT BEACH"), the City of Orange ("ORANGE"), the City of Santa Ana ("SANTA ANA"), the City of Tustin ("TUSTIN"), the Irvine Ranch Water District ("IRWD"), The Irvine Company ("TIC"), the California Department of Transportation ("CALTRANS"), Tustin Legacy Community Partners ("TLCP"), Lennar Homes of California, Inc. ("LENNAR"), and Orange County Great Park Corporation ("GPC"). The seventeen entities are hereinafter sometimes jointly referred to as the "PARTIES" and individually as "PARTY". The cities are hereinafter sometimes jointly referred to as the "CITIES". Thirteen entities (all entities except for CALTRANS, TLCP, LENNAR, and GPC) are sometimes jointly referred to as the "ORIGINAL PARTIES."

WITNESSETH

WHEREAS, the ORIGINAL PARTIES entered into Agreement No. D99-128 on September 18, 2003, referred to hereinafter as "AGREEMENT", to provide funding for the Nutrient, Fecal Coliform and Toxics Total Maximum Daily Load (TMDL) studies in the Newport Bay Watershed; and,

WHEREAS, the PARTIES approved Amendment 1 to Agreement No. D99-128 on July 5, 2006, which amended Section 3 (Funding), Section 4 (Program Budgets and Costs), Section 5 (Payments), Section 10 (No Third Party Beneficiaries), Section 16 (Notices), Exhibit A, and Exhibit C of the AGREEMENT in their entirety and added CALTRANS, TLCP, LENNAR, and GPC as AGREEMENT participants; and,

WHEREAS, according to Section 6 of the AGREEMENT, the AGREEMENT may be amended in writing only with the unanimous written approval of the PARTIES; and,

1 WHEREAS, the PARTIES desire to extend the term of the AGREEMENT for two
2 (2) years to be consistent with the end of the current phase of the Nitrogen and
3 Selenium Management Program and to recognize prior payments for services made directly
4 by CALTRANS and IRWD, for work plan development and Bay algae studies respectively, as
5 credits in the 2008-09 program budget.

6 NOW, THEREFORE, in consideration of the foregoing, it is agreed by and
7 between the PARTIES hereto that the AGREEMENT shall be amended as follows:

8 Section 1. Each and all of the provisions of the AGREEMENT remains in
9 full force and effect, except that all references to Resources and Development
10 Management Department or RDMD shall be amended to OC Public Works and Section 2 and
11 Section 4 are amended in their entirety, as follows:

12 Section 2. Section 2 of the AGREEMENT, entitled "TERM", shall be amended
13 to read in full as follows: The term of this AGREEMENT is extended for a two-year
14 period, commencing on July 1, 2008 and continuing to and including June 30, 2010,
15 unless sooner terminated as provided in Section 8.

16 Section 4. Section 4 of the AGREEMENT, entitled "PROGRAM BUDGET AND COSTS"
17 shall be amended to read in full as follows: The COUNTY shall submit a scope of work
18 and a budget for the following fiscal year to each of the PARTIES by February 15 of
19 each year. The budget shall contain an explanation of any recommended program
20 changes, an estimate of all planned expenditures and an estimate of the payment
21 required from each PARTY for the following fiscal year. For the State of California
22 budgeting requirements, CALTRANS' contribution shall not exceed \$150,000 or five
23 percent (5.0%) of the total budget costs, whichever is less, for each fiscal year
24 during the term of the AGREEMENT. If CALTRANS contribution would be greater than
25 \$150,000 for a given fiscal year, the amount over \$150,000 ("EXCESS AMOUNT") shall be
26 cost-shared as described in Section 2 of AMENDMENT 1, with the exception that for such
EXCESS AMOUNT, the ORIGINAL COST ALLOCATION shall be ninety-three percent (93%) and
CALTRANS contribution shall be zero percent (0%).

The PARTIES shall be permitted to review and approve the program scope of
work and budget for the forthcoming year. Criteria for approval shall be affirmative

1 written responses from all of the PARTIES. The COUNTY and DISTRICT will constitute
2 one approving PARTY.

3 The tasks and expenditures for each fiscal year will be presented and
4 calculated as shown in Exhibit C, which is attached hereto and made a part hereof.
5 All tasks and expenditures will be updated each fiscal year as part of the budget
6 approval process. Therefore, Exhibit C as attached is a form to be completed every
7 year. The COUNTY shall be entitled to charge to the program all costs for direct
8 labor, materials, equipment and outside contract services for costs associated with
9 carrying out the approved scope of work. Recoverable costs will also include an
10 overhead charge calculated by the County Auditor-Controller which includes OC Public
11 Works overhead and County-wide cost allocation plan.

12 CALTRANS and IRWD will receive credits of \$75,000 and \$6,932.88
13 respectively in the fiscal year 2008-09 program budget for prior payments for services
14 related to the AGREEMENT.

15 IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT the
16 day and year first above written:
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COUNTY OF ORANGE,
a political subdivision of the State of
California

Date: _____

By: _____
Bryan Speegle, Director, OC Public Works

APPROVED AS TO FORM:
COUNTY COUNSEL

By: _____
Punam P. Prahalad, Deputy

Date: _____

CITY OF COSTA MESA

Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Costa Mesa

CITY OF IRVINE

Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Irvine

CITY OF LAGUNA HILLS

Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Laguna Hills

CITY OF LAGUNA WOODS

Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Laguna Woods

CITY OF LAKE FOREST

Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Lake Forest

CITY OF NEWPORT BEACH

Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Newport Beach

CITY OF ORANGE

Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Orange

CITY OF SANTA ANA

Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Santa Ana

CITY OF TUSTIN

Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST:

City Clerk

City Attorney of Tustin

THE IRVINE RANCH WATER DISTRICT

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

THE IRVINE COMPANY

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

CALIFORNIA DEPARTMENT OF TRANSPORTATION

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

TUSTIN LEGACY COMMUNITY PARTNERS, LLC
a Delaware limited liability company

Date: _____

By: _____
Ken Nishikawa
VP Shea Properties,
Director of Engineering
Tustin Legacy Community Partners, LLC

Date: _____

By: _____
Name: _____
Title: _____

Lennar Homes of California,
a Developer Member of Heritage Fields Limited
Liability Company

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

GREAT PARK CORPORATION,
a California non-profit organization

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____